

United States District Court
Southern District of Texas
FILED

SEP 15 2006

Michael N. Milby
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

LUIS ALEJANDRO GARZA

VS.

THE UNITED STATES OF
AMERICA

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§
§

CIVIL ACTION NO. B-02-154
FEDERAL TORT CLAIMS ACT

PLAINTIFF'S THIRD MOTION TO COMPEL DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, LUIS ALEJANDRO GARZA, Plaintiff in the above-entitled and numbered cause, and moves this court to compel discovery from the government and in support thereof would respectfully show as follows:

1.

On May 17, 2006, Plaintiff's attorney requested of the government's attorney the whereabouts of certain former inmate witnesses whom are now on supervised release. According to the government, a court order is required to obtain the last known address of these inmates on supervised release. Attached hereto as **Exhibit "1"** are copies of correspondence with the government's attorney. Plaintiff merely asks for their last known address to determine the extent of their knowledge

regarding the facts relevant to this case. To the Plaintiff's knowledge the following witnesses are on supervised release:

1. Myron Coleman #76988-079
2. Damione Brock #10471-035
3. L. D. Richardson #23687-077
4. James Kevin Hodges #09177-035
5. Corey Williams #76893-079
6. Robert Alford #02020-081
7. Jose Luis Jaime #89539-079
8. Jesus Martinez-Orosco #71774-079
9. Felipe Castro-Ontivero #25117-177
10. Javier Tijerina #76844-079
11. Jose Luis Guzman-Posos #86842-079

2.

Documents created by the government in investigating the relevant assaults reflect that F.B.I. agent Brian W. Ritter arranged to have two videotapes created from the cameras in the recreational yard of the time in question. Agent Ritter additionally had several still photos created from the video frames. These depictions would include the relevant time leading up to the assaults and the assaults in

progress. They may indicate whether officer Romero was patrolling the yard as required. There were also photographs of Plaintiff soon after he was assaulted. These photographs are relevant to his damages. Attached hereto as **Exhibit "2"** are the F.B.I. memoranda dated March 16, 2001, June 22, 2001, February 7, 2001, February 9, 2001, and a chain of custody log, indicating the existence of these videotapes, that B. Ritter was the last person to possess an 8 millimeter cam videotape of the recreation yard and that photographs were taken of Plaintiff. Plaintiff requests that the government produce these videotapes and photographs or produce Brian Ritter to explain why they no longer exist.

3.

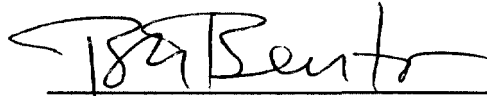
Depositions were taken of four government employees. The government, which wanted transcription of the depositions, paid for the stenographer. Plaintiff, who is indigent, has asked the government for copies of the transcripts at a reasonable copying price. The government will not produce copies of the transcripts at any price. Attached hereto as **Exhibit "3"** is a letter to that effect from the government's attorney. Plaintiff asks that the court compel the government to produce copies of the transcripts at a reasonable cost per page.

4.

WHEREFORE, Plaintiff prays, after notice and hearing, the court grant the relief sought in this motion, that Defendant be compelled to answer the questions

and produce the items described herein, and for such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,



Barry R. Benton
284 Ebony Avenue
Brownsville, Texas 78520
Telephone : 956-546-9900
Facsimile : 956-546-9997
State Bar No. 02176500
Federal I.D. No. 3968

**ATTORNEY FOR PLAINTIFF
LUIS ALEJANDRO GARZA**

CERTIFICATE OF CONFERENCE

I CERTIFY that an attempt has been made to resolve the matters described in the foregoing motion without the necessity of Court intervention and same has failed.



BARRY R. BENTON


CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the above and foregoing **Plaintiff's Third Motion to Compel Discovery** has been hand-delivered to attorney of record, to wit:

Via Hand Delivery

Ms. Nancy L. Masso
Assistant United States Attorney
600 E. Harrison Street, #201
Brownsville, Texas 78520

on this 13th day of September, 2006.

A handwritten signature in black ink, appearing to read "Barry Benton", written over a horizontal line.

BARRY R. BENTON